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HIGH COURT OF CHHATTISGARH : BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CRIMINAL APPEAL NO.273 of 2000

Appellant : Neel Kamal Baghe,
S/o Ganesh Baghe,
Aged 19 years,
R/o Bardih PS —
Suhela, Dist-Raipur

Vs.

Respondent: The State of Chhattisgarh

PRESENT:

Shri Abhay Tiwari, counsel for the appellant.

Shri VVS Murthy, Additional Public Prosecutor with Shri Satish Gupta, Deputy Government Advocate for the State.

J U D G M E N T
(Dated 8th November, 2005)

This appeal is directed against the judgment of conviction and order of sentence dated 18/01/2000 passed by Second Additional Sessions Judge, Baloda Bazar, Dist. Raipur, whereby the appellant has been convicted under Section 376 and 506 of the IPC and sentenced to undergo R.I. for 10 years and to pay fine of Rs.1000/- (Rupees one thousand), in default of payment of fine to further undergo SI for six months and has also been sentenced to undergo RI for one year respectively with a direction to run both the sentences concurrently.

(B6)

2) Brief facts of the case are that, on 25.03.1999 at about 10 pm, while the prosecutrix was on her bed, the appellant entered her house, took her into a room and putting her under threat, committed sexual intercourse against her will and without her consent. The appellant after committing rape on her, fled away. Prosecutrix raised voice. Hearing her cry, her brother Radhey Shyam came there, to whom she narrated the whole story. Prosecutrix accompanied with her brother Radhey Shyam went to Police Station Suhela and lodged FIR. The crime was investigated by Rajendra Prasad Sharma, Station House Officer, Suhela.

3) Appellant and the prosecutrix, both were sent for medical examination. Underwears of appellant and prosecutrix were seized. Admission and Discharge Register from Government Primary School, Bardih was seized, according to that register, date of birth of Prosecutrix is 03.12.1986. Medical Officer, who examined Prosecutrix, also prepared slide from vaginal swab for chemical examination. Their underwears and slide were sent for chemical examination. After examination, the chemical examiner reported that they contain semen and spermatozoa. Witnesses were examined under Section 161 of the Cr.P.C. and after investigation, challan was led in the court of Judicial Magistrate First Class, Baloda Bazar, who commited the case to the court of Sessions for trial.

(89)

4) Appellant was charged under Section 376 and 506 part II of the IPC., who abjured the guilt and his defence was that he is innocent and has been falsely implicated. Learned trial Court, after evaluating the evidence on record held the appellant guilty of offences punishable under Section 376 and 506 of the IPC and therefore, sentenced him as aforesaid.

5) Prosecutrix (PW-5) in her evidence has deposed that she was sleeping in her house along with her younger brothers and sisters. At about 10 p.m., the appellant came into her house, threatened her and lifted her from her cot, took inside the room. He removed her dress and underwear and penetrated his penis inside her vagina and committed rape on her. Thereafter, appellant fled away. She cried, and hearing her cry, Radhey Shyam came to her and she narrated the whole story and apprised him that the appellant committed rape on her, putting her under threat. Her Statement has been supported by the evidence of Radhey Shyam (PW/6) and Suraj Bai (PW-12). Both of these witnesses have deposed that they heard the out cry of Prosecutrix, therefore, they went to her house and she narrated the story to them.

6) FIR, Ex P-6 proved by Prosecutrix (PW/5) and Rajendra Prasad Sharma, Station House Officer (PW/13) supports the story of Prosecutrix. Vide Ex P-7, underwear of Prosecutrix and Ex P-8,

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underwear of the appellant were seized. Both the documents have been proved by Kartik Ram (PW-7) and Rajendra Prasad Sharma, SHO (PW/13). Chemical Examiner, after examination of these articles in his report opined that both of them contained semen stains and spermatozoa. Dr Anita Verma, (PW-1), who examined the prosecutrix, has deposed in her statement that for chemical examination she prepared slide and swab. Upon chemical examination, the examiner opined that the slide and swab contain semen and spermatozoa. From the report of chemical examination also, it appears that the appellant had committed sexual intercourse with prosecutrix.

7) From the aforesaid discussion and taking into consideration that nothing substantial has been brought to dis-believe the version of Prosecutrix, on the other hand, it is found supported by all corners. In view of the above, I am of the opinion that learned trial Court has committed no error in holding the appellant guilty of putting the prosecutrix under threat, committed intercourse, without her will and consent.

8) Learned counsel for the appellant, relying on the judgment rendered by **Hon'ble Apex Court in *Raju Vs the State of Karnataka*, reported in 1994 CRLJ 248,** contended that the appellant is a teenager and from the medical evidence, no brutality appears to be done by him, therefore, he is entitled for lesser

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sentence. But learned trial court, without considering entire facts and aspects of the case, punished him with maximum sentence of ten years. The appellant is a teenager and he is behind the bars since his arrest. No criminal record is against him. Therefore, taking into consideration all the facts, the appellant deserves to be treated with leniency.

9) In the result, the appeal is partly allowed. Conviction under Section 376 and 506 of the IPC is maintained. Sentence passed under Section 376 of the IPC is set aside; instead, the appellant is sentenced to undergo R.I. for seven years and to pay a fine of Rs.1000/-(Rupees one thousand) and in default of payment of fine, to further undergo SI for six months. Rest of the sentence and direction to run the sentences concurrently shall remain as it is.

Sd//-
V.K.Shrivastava
Judge

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